

1 the testimony yesterday. If the Ravens are
2 complaining about non coverage in Harrisburg,
3 then presumably they think they can get
4 carriage in Harrisburg from CSN Philly.
5 That's the inference that I make based on that
6 testimony.

7 Q Okay. Did Mr. Cuddihy say,
8 testified, that there was ever competition
9 between CSN Philadelphia and MASN for Ravens'
10 rights?

11 A I don't think he said CSN Philly
12 in particular, but he did say competition
13 between CSN and MASN if I'm recalling
14 correctly for Ravens' rights.

15 Q And so it's your testimony that
16 you think it's more likely that a Philadelphia
17 based sports net would compete for a Baltimore
18 football team's television rights than a
19 Baltimore based RSN.

20 A I don't want to say more likely.
21 What I heard yesterday was that Harrisburg is
22 part of the Ravens' territory. I heard that

1 yesterday.

2 Q Isn't it the fringe of the Ravens'
3 territory?

4 A It may be the fringe, but it seems
5 to me that the Ravens are concerned about
6 being shown in Harrisburg based on the
7 testimony I heard yesterday.

8 Q I mean as a matter of basic
9 economics, isn't it far more likely that an
10 RSN based in Baltimore would be the one that's
11 bidding for Baltimore Ravens' rights than one
12 based in Philadelphia where there is another
13 NFL team based?

14 A What I think we're presuming as
15 part of this question that when CSN makes a
16 bid for programming they're saying we're
17 bidding on behalf of CSNMA but not on CSN
18 Philly. I'm not sure how that bidding occurs.
19 Comcast may be able to say, "Ravens, we'll not
20 only show you on CSNMA, but we'll show the
21 preseason games on CSN Philly." I'm not sure
22 how that bidding goes.

1 Q So you're speculating now, Dr.
2 Singer.

3 A No. No, I'm not. I'm saying that
4 I don't know. I just don't know when Comcast
5 makes a bid for programming rights if they say
6 this is a bid from CSNMA and I think your
7 question presumes that that's how the bidding
8 occurs and I just don't know.

9 Q Here's the question, Dr. Singer.
10 In your deposition, you said you knew of no
11 instance where CSN Philadelphia competed for
12 sports rights with MASN.

13 A That's not what I said in my
14 deposition. I couldn't recall any. I didn't
15 say that I knew for certainty that they've
16 never competed.

17 Q And that's all I'm saying. You
18 have no knowledge of competition between CSN
19 Philadelphia and MASN. That was your
20 deposition testimony, wasn't it?

21 A I just -- To put it in my words, I
22 could not recall at the time a particular

1 episode in which CSN Philly competed against
2 MASN.

3 Q And sitting here today, you still
4 cannot recall of an particular episode where
5 CSN Philly competed with MASN, can you?

6 A If you're just going to separate
7 out CSN Philly and say do I know that CSN
8 Philly competed with MASN for the Ravens, I
9 can't say that I know that.

10 Q Okay. And are you aware of --
11 You're not aware of any instance where CSN
12 Philly competed for advertising of MASN, are
13 you?

14 A I can't tell you particular
15 advertisers over whom MASN and CSN Philly have
16 competed for.

17 Q The only two anecdotes that you're
18 relying on were competition, pertaining to
19 competition, between MASN and CSN MidAtlantic.
20 Isn't that right?

21 A When you say two anecdotes, are
22 you referring to anecdotes over lost

1 advertising accounts and anecdotes over lost
2 programming rights?

3 Q Let's be specific. We talked just
4 a few minutes about two anecdotes of lost
5 advertising. One was [REDACTED] One was [REDACTED]
6 [REDACTED] Do you recall that?

7 A Correct.

8 Q So my question to you is simple.
9 Those two anecdotes pertain to competition
10 between MASN and CSN Midatlantic. Isn't that
11 right?

12 A I believe so.

13 Q Now in the NFL matter you placed
14 great emphasis on the relative ratings of the
15 NFL Network and the affiliated Comcast
16 network. Do you recall that?

17 A I recall putting relative ratings
18 in my report. Whether or not that section got
19 more or less emphasis than other sections is
20 questionable.

21 Q I mean there were over ten pages
22 of your report that were devoted to comparable

1 analysis of the ratings of the NFL Network and
2 the Comcast affiliated networks. Isn't that
3 right?

4 A I'll take your word for it that
5 it's ten and I can't remember how long the
6 report was. It was a pretty long report.

7 Q But in the analysis of a similarly
8 situated question --

9 JUDGE SIPPEL: Are you talking
10 about his testimony yet?

11 THE WITNESS: He's asking me about
12 my NFL testimony.

13 JUDGE SIPPEL: Your NFL testimony?

14 MR. BURKE: That's correct, Your
15 Honor.

16 JUDGE SIPPEL: I forgot that.

17 (Laughter.)

18 Well, that's the way it is.
19 That's tough. Life isn't fair.

20 THE WITNESS: I thought that would
21 stick with you for awhile.

22 BY MR. BURKE:

1 Q So this was very important to your
2 analysis of the similarly situated issue in
3 the NFL case. Isn't it? The relative
4 ratings.

5 A I think the ratings came up as a
6 response to an argument that Comcast was
7 making that NFL Network wasn't popular in the
8 off-season. That's my recollection.

9 Q And you recall devoting a
10 substantial amount of time to both your
11 written report and your testimony about the
12 ratings of the two networks.

13 A It was a fair amount of time about
14 the relative ratings.

15 Q Now in your direct testimony in
16 this case, you have absolutely no analysis of
17 the relative ratings of the sports nets that
18 are at issue here, do you?

19 A I think that's fair. I only have
20 the ratings of the Orioles when they were
21 carried on CSNMA and it's an issue not that I
22 didn't want to do. It's that I just didn't

1 have access to comparative ratings here.

2 Q So now in your deposition
3 testimony, you said that you were actually
4 going to add a discussion of relative ratings
5 into your direct testimony. Didn't you do
6 that?

7 A Yes.

8 Q But you never did that.

9 A Let's be careful. I said that I
10 was going to add -- Let me tell you just so we
11 can step back. I was told going into my
12 deposition that ratings data had been newly
13 produced to Comcast I think the day before my
14 deposition. I had --

15 JUDGE SIPPEL: The Nielsen
16 ratings.

17 THE WITNESS: The Nielsen ratings.
18 And I was asked at the deposition did I plan
19 to do an analysis of those ratings and I said,
20 "Yes, I plan to do an analysis of those
21 ratings" and I didn't realize that what I got
22 was less than what I expected. I only got

1 back ratings data for the Orioles when they
2 were carried on CSNMA. So instead of it being
3 a section, it turned out to be a footnote.

4 BY MR. BURKE:

5 Q So are you saying that you only
6 got CSNMA ratings?

7 A If my recollection is correct, I
8 think I got ratings data for 2002, 2003, 2004
9 and I believe that was at a time when the
10 Orioles were carried on CSNMA.

11 Q And you didn't get any ratings
12 from MASN.

13 A I may have gotten ratings from
14 MASN, but I can't recall them right now.

15 Q And you didn't get any current
16 ratings from CSN MidAtlantic after 2004 and
17 2005.

18 A It's possible that that was
19 included in the data, but I think by that time
20 the Orioles were no longer carried by CSNMA.
21 So I couldn't look at ratings in Harrisburg
22 and there's a reason I picked 2004. We can go

1 into that.

2 Q But you did no comparative
3 analysis of the ratings of CSNMA versus MASN's
4 ratings for example.

5 A For example in 2009 a comparative
6 rating analysis of the kind that I did in NFL.

7 Q That's correct.

8 A No, I did not do it.

9 Q And you did no comparative
10 analysis of the relative ratings of MASN
11 versus CSN Philadelphia either, right?

12 A Correct.

13 JUDGE SIPPEL: I'm going to save
14 your testimony on the NFL. I mean your
15 written testimony. I'm going to save that
16 because it's very educational.

17 THE WITNESS: Thank you. Now I
18 feel better.

19 JUDGE SIPPEL: Well, I didn't want
20 to upset you in any way.

21 MR. BURKE: If we could, Your
22 Honor, maybe a very short break and then I

1 think we would be able to finish up with Dr.
2 Singer shortly. Would that be possible?

3 JUDGE SIPPEL: Well, the last part
4 of that question is certainly very possible.

5 (Laughter.)

6 I have to say I don't believe in
7 very short breaks.

8 MR. BURKE: Fair enough.

9 JUDGE SIPPEL: We'll take 15
10 minutes and then you finish him up.

11 MR. BURKE: All right. Great.

12 JUDGE SIPPEL: Off the record.

13 (Whereupon, a short recess was
14 taken.)

15 JUDGE SIPPEL: Yes, sir.

16 MR. BURKE: I apologize, Your
17 Honor. I just want to turn my Blackberry off
18 here.

19 JUDGE SIPPEL: But you only have a
20 few questions left, right?

21 MR. BURKE: I really do, Your
22 Honor. I think we're almost done.

1 BY MR. BURKE:

2 Q Dr. Singer, just so it's clear,
3 it's your testimony that the price that MASN
4 charges should not be considered in
5 determining whether Comcast has engaged in
6 discrimination vis-a-vis MASN, right?

7 JUDGE SIPPEL: The price he
8 charged for what?

9 BY MR. BURKE:

10 Q MASN's price should not be
11 considered in determining whether Comcast has
12 engaged in discrimination or not?

13 A I think that's not my testimony
14 and I think to summarize what I said in my
15 deposition

16 --

17 Q No is your answer?

18 A It's a little more subtle than
19 that.

20 Q You're not agreeing with what I'm
21 saying.

22 A I want to tell you how it should

1 come in.

2 JUDGE SIPPEL: That's it. You may
3 follow up on that.

4 BY MR. BURKE:

5 Q So I guess let's go to your
6 deposition which is Exhibit 130.

7 A I'm there.

8 Q Go to 107. Line 3. Question:
9 How does price factor into your analysis?

10 Answer: I'm of the opinion that
11 price shouldn't come into consideration until
12 what I call phase two, the valuation phase.

13 Question: Not discrimination?

14 Answer: Not discrimination.

15 MR. KIM: Objection.

16 JUDGE SIPPEL: What's the
17 objection?

18 MR. KIM: The objection is he says
19 "not discrimination" and then he explains why.
20 He's only reading part of the answer.

21 JUDGE SIPPEL: Well, you can
22 follow up on redirect.

1 MR. KIM: That's fine, Your Honor,
2 as long as the record reflects that was not
3 his complete answer.

4 JUDGE SIPPEL: Yes, that's fine.
5 Do you want him to give the whole answer? Do
6 you want him to read the whole thing now?

7 MR. BURKE: I don't know that it's
8 going to be that time effective, Your Honor,
9 but if you want it all read into the record --

10 JUDGE SIPPEL: Well, he's either
11 going to do it now or on redirect.

12 THE WITNESS: Well, I'd also like
13 to point out that I said there is a way that
14 it can come in indirectly, later on in the
15 deposition, in this phase one. At this point,
16 you're correct, at this point I said not
17 directly, not directly.

18 BY MR. BURKE:

19 Q So is your position that the price
20 MASN charges should not figure directly into
21 the determination of whether Comcast is
22 engaged in discrimination or not?

1 A I think that's fair.

2 JUDGE SIPPEL: I'm sorry, what
3 price are you talking about?

4 MR. BURKE: MASN's price, Your
5 Honor.

6 JUDGE SIPPEL: MASN's price --

7 MR. BURKE: Per subscriber.

8 JUDGE SIPPEL: What MASN would
9 charge to carry its programming, what it would
10 charge --

11 MR. BURKE: An MVPD.

12 JUDGE SIPPEL: Yes, okay.

13 MR. BURKE: It's Comcast's
14 position that MASN is too expensive and I
15 believe it's Dr. Singer's position that that
16 is not a relevant consideration for the
17 purposes of determining whether discrimination
18 has taken place.

19 THE WITNESS: My position is more
20 nuanced than that and I'm happy to describe
21 it, but --

22 JUDGE SIPPEL: We're allowed to

1 use that word.

2 THE WITNESS: Were we not before?

3 BY MR. BURKE:

4 Q Let's just be clear. Phase two is
5 the phase after discrimination had been found,
6 right?

7 A Correct.

8 Q Phase two is the determination of
9 the fair market price under your framework,
10 right?

11 A That is correct.

12 Q So again, the question was how
13 does price factor into your analysis and your
14 answer was "I'm of the opinion that price
15 shouldn't come into consideration until what
16 I call phase two, the valuation phase."
17 Right?

18 A Yes, and I still stand by that,
19 but I also later in the deposition said
20 indirectly, it's coming in when you look at
21 evidence of who's carrying you, right?
22 They're presumably carrying you at a price,

1 right? And so I made that point later. I
2 said if you want to look at carriage decision
3 of every other major MVPD in the contested
4 areas, they're doing it at the price that
5 we're asking for. In that sense, the price is
6 indirectly coming into the discrimination
7 analysis.

8 What I reject is the notion that
9 Comcast can just look at the price directly
10 and say that price is too high. That's an
11 efficiency defense.

12 Q And the discussion that you've
13 just gone through, is that anywhere in your
14 answer to the questions on page 107 or 108?

15 A It could be. I'd have to read 107
16 and 108, but after having read this again last
17 night that that discussion about how price can
18 indirectly can come into what I call the phase
19 one analysis is in there.

20 Q Now it's your -- I think when you
21 talked about valuation which is your phase
22 two, you said that there were several

1 different methodologies you use, but that
2 there was one principal methodology. Is that
3 fair?

4 A I think it's fair. There's a
5 principal methodology and then there's two
6 methodologies that corroborate my opinion,
7 principal methodology.

8 Q And the principal methodology is
9 to look at the existing actual contracts that
10 MASN has which MVPDs in zone four, right?

11 A Yes, the voluntary transactions of
12 two parties for the same programming in the
13 same geographic market, yes.

14 Q We're almost done, Dr. Singer, so
15 if you just answer my questions then we'll get
16 you off the stand more efficiently. I think
17 the answer was yes to that question?

18 A I liked my answer.

19 Q That doesn't come as a surprise.

20 A Sorry, yes, yes, yes.

21 Q So again, your principal
22 methodology is to look at the existing

1 contracts between MVPDs and MASN in area four,
2 right?

3 A I think it's fair.

4 Q And your position is that they all
5 have the same price, [REDACTED], right?

6 A That's what I understand, yes.

7 JUDGE SIPPEL: That's not
8 debatable. That's graphically shown in one of
9 these exhibits.

10 THE WITNESS: I believe that's the
11 case. That's what's been represented to me by
12 MASN that it's all the same.

13 BY MR. BURKE:

14 Q And that's MASN Exhibit 242,
15 right?

16 A I'm not sure. It's a table that's
17 in my --

18 JUDGE SIPPEL: I know it's here.
19 We just went over it. I know it's here.

20 BY MR. BURKE:

21 Q And it shows [REDACTED] for all the
22 different MVPDs, right, Dr. Singer?

1 A In zone four, correct.

2 JUDGE SIPPEL: In zone four.

3 BY MR. BURKE:

4 Q Now you don't take into account
5 marketing or launch support in calculating
6 that [REDACTED] per sub number, do you?

7 A Well, I take it into account, but
8 that's not the price, that's not included in
9 the gross price, no.

10 Q Dr. Singer, what is the net
11 effective rate or NER?

12 A The net effective rate would be
13 the gross price, in this case [REDACTED], minus any
14 kind of marketing subsidy or launch support
15 that MASN pays the MVPD.

16 Q And just explain to everyone in
17 the room here, what's marketing and launch
18 support?

19 A It is money that MASN is prepared
20 to pay so that the MVPD will go out and peddle
21 its product.

22 Q So on the one hand the MVPD is

1 paying MASN a per subscriber rate, but on the
2 other hand MASN is paying back to the MVPD
3 certain subsidies, like the kinds you
4 described, right?

5 A Correct.

6 Q And so to actually know what the
7 true price the MVPD is paying, you have to
8 take into account both the pluses and the
9 minuses, isn't that right?

10 A To get the net price, correct.

11 Q And the net price is what's most
12 relevant from an economic perspective, isn't
13 it?

14 A Well, certainly. I'll just say
15 that if we get to phase two, if there's a
16 determination here about discrimination has
17 occurred and MASN has been paired, my guess is
18 that Comcast would pay the [REDACTED]

19 [REDACTED]
20 [REDACTED]

21 Q So the fair market value is not
22 [REDACTED] minus some amount that you

1 haven't calculated yet?

2 A [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] If I

11 just guess right now it would be speculating,

12 but it's a number that wouldn't move you

13 [REDACTED].

14 Q So your testimony is you don't

15 think that the marketing support that's at

16 issue here is very significant?

17 A When I heard, my memory is that

18 when I heard it the first time and it's

19 unfortunate I can't -- maybe you can get it

20 through some other witness or during a break

21 or something, I'm happy to turn it over to

22 you. When I heard it the first time I thought

1 it was [REDACTED].

2 Q I'm not asking you to testify what
3 the number is today, but it's your
4 recollection that you recall thinking it was
5 not a [REDACTED]

6 A Correct.

7 Q It didn't move the needle from
8 your perspective?

9 A I like that phrase.

10 Q Okay. Now you used a net
11 effective rate when you calculated the fair
12 market value in the NFL matter, right?

13 A I did.

14 Q So you have used two different
15 methodologies in these two different cases,
16 right?

17 A I don't think I used two different
18 methodologies, just let me say I believe that
19 if we get to a phase two, what I call phase
20 two here, the amount that Comcast should be
21 compelled to pay should be the net rate. In
22 the NFL case it was very significant because

1 the subsidy was big, number one, and number
2 two, it varied across each of NFL's customers.
3 And it was for some MVPDs, the NFL paid back
4 a lot. For others, they paid back a little.
5 Here, [REDACTED]
6 [REDACTED] So I don't
7 think that it's going to be a bone of
8 contention.

9 Q I have nothing further.

10 JUDGE SIPPEL: Do you have a rough
11 idea of what the percentage might be of the
12 [REDACTED]?

13 THE WITNESS: If I recall
14 correctly, it's in the pennies. If I recall
15 correctly, but --

16 JUDGE SIPPEL: Well, [REDACTED] it
17 [REDACTED]

18 THE WITNESS: Correct.

19 JUDGE SIPPEL: [REDACTED]
20 [REDACTED].

21 THE WITNESS: [REDACTED],
22 [REDACTED]. If I recall that, I'm

1 sure this can come in through --

2 JUDGE SIPPEL: That's all right,
3 that's okay.

4 THE WITNESS: [REDACTED]
5 [REDACTED]

6 JUDGE SIPPEL: That's fine, by the
7 way the rate set that's been referred to here,
8 that's in MASN Exhibit 238 which is your
9 testimony, page 30. That's Table 1, MASN rate
10 card.

11 Okay. Mr. Schonman.

12 CROSS EXAMINATION

13 BY MR. SCHONMAN:

14 Q Dr. Singer, good morning. Good to
15 see you again.

16 A Good morning.

17 Q Over the course of your direct
18 testimony and in your oral testimony this
19 morning, you've talked about a number of harms
20 that flow from gaps in MASN's coverage area,
21 correct?

22 A Correct.